

This letter discusses the sale of commissary items in correctional institutions by an independent vendor. See 86 Ill. Adm. Code 130.2055. (This is a GIL).

September 12, 2002

Dear Xxxxx:

This letter is in response to your inquiry and e-mail of August 16, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your e-mail, you have stated and made inquiry as follows:

As we discussed, here is the contract containing the specifics of the arrangement with the vendors. In the past the Department has operated inmate commissaries on site at the institutions. We are now implementing a delivery system where the inmate would place an order and he then be delivered the package. As I explained the inmate fills out an order form which is then transmitted by Department staff to the vendor. Payment is deducted from the inmates trust fund account. Our question is whether the Department would be liable for sales tax. It is my feeling that since under the Code the Department can establish a commissary for inmates then this would be a governmental function and no sales tax would be involved. We have never charged sales tax in our on site inmate commissaries.

Any assistance you can provide would be greatly appreciated.

DEPARTMENT'S RESPONSE:

Since August 1, 1961, many governmental bodies must register with the Illinois Department of Revenue and collect and remit Retailers' Occupation Tax (sales tax) on their sales of tangible personal property personal property, unless they engage in a type of sale that performs a governmental function. Department regulation 86 Ill. Adm. Code 130.2055(a) (copy enclosed) provides that "the State of Illinois or any local governments in Illinois, or any agency or instrumentality of any such governmental body, incurs Retailers' Occupation Tax liability when it engages in the selling of tangible personal property at retail to the public other than in the performance of a governmental function." The reason for this rule is to ensure that governmental units do not have a competitive advantage when selling items that are also sold by Illinois retailers. The Illinois General Assembly did not intend to give governmental units a competitive advantage over Illinois retailers.

If the Department makes commissary sales to inmates at its correctional institutions, those sales would generally be considered to be in the performance of a governmental function. However,

a review of the portions of your contract that were attached to your e-mail appears to indicate that the independent vendor is the actual entity making the commissary sales. The correctional institutions are merely transmitting orders to the independent vendor for processing.¹ We believe that the independent vendors would generally incur Retailers' Occupation Tax liability on the sales to inmates under the provisions of the contract you have provided for our review.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:mks
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¹ See Section 4.11 of the contract.